

The Fairness of Congressional Earmarking In American Democracy:

A Comparison of the Distribution of
FY 2008 and FY 2009 Funding (via Congressional
Direction) versus
FY 2007 Funding (via Federal Agency Grants)

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THE IMPACT OF CONGRESSIONAL EARMARKING

This paper examines how the equitable distribution of federal funding changed when spending decisions were made by federal agencies, as opposed to Congress.

The Congressional earmarking process is a practice rooted in the U.S. Constitution, conducted since the time of the founding fathers, and beneficial to communities across the nation.

What is an earmark? Is it the federal government writing a check to fix a broken and congested road or to support a public health program? Is it the federal government writing a check to a private contractor to provide the Army equipment for our troops on the ground? The answer, in all cases, is yes. An earmark is language in a federal bill or committee report that provides funds to a non-federal entity outside of the normal formula-driven or competitive grant process.

Earmarks, critics say, are a waste of American tax dollars. Critics contend that congressionally-directed spending projects, or earmarks, are merely ways for Members of Congress to bring funding back to their districts for special “pet projects,” which only benefit a select few. Critics also contend that only those interests represented by a few powerful lawmakers actually benefit from the congressional earmark process.

In reality, the largest beneficiaries of the congressional earmark process are public agencies: local governments, colleges and universities, hospitals, public transit providers, public water agencies, and other accountable local bodies working in the public interest. All communities have needs, regardless of their size, economic vitality, or political standing. To meet these needs, the federal government provides funding through many different avenues, including congressional earmarks. In most cases earmarks serve a public need, as they fund local or state projects devoted to local infrastructure improvements, needed economic development initiatives, public safety enhancements, or environmental cleanup projects – projects that serve a public good. This funding alleviates local tax burdens by providing additional funding for local priorities. Additionally, congressional earmarks are awarded to local governments represented by both senior and junior members of congress in both parties, and nearly all congressional districts nationwide benefit through this process.

Congressional earmarks are also provided in areas subject to program guidelines established by federal agencies. Congressionally-directed spending is structured by law, guided by established merit-based parameters, and opened to the scrutiny and transparency of review. Earmarking is not a loophole to allow funding decisions to circumvent clearly specified program requirements determined by law. In fact, projects are subject to a process that thoroughly vets the merits of requests, assuring that funded projects fully meet underlying statutory authorities, and the mission of the agency. Congressional staffs at the member, subcommittee, and full committee levels not only determine whether a project meets the statutory and agency guidelines for a funding program, but also pare down the thousands of requests they receive to determine where funding is most needed and where the biggest return on investment will occur. The process limits bureaucratic related holdups because members and their staffs are in touch with the needs of their constituents.

Further, earmarking does not increase federal spending, but instead directs funds appropriated from established federal programs to areas of need as determined by elected members of congress working with local elected officials and constituents. Moreover, recent House and Senate rule changes, in conjunction with increased utilization of the Internet, have enhanced transparency in the earmarking process. Members are required to post on their websites all projects that they have submitted to the Appropriations Committee for funding, including the project's recipient, description and value to the taxpayer. This change, in addition to a requirement that members' names appear in the final version of appropriations legislation alongside projects they are responsible for requesting, holds members accountable for where they believe taxpayer money should be spent.

Proponents of eliminating earmarks argue that the Executive Branch is better suited than Congress to distribute federal dollars. When you examine how funding was distributed when federal agencies controlled the allocation of all spending, you will see a distribution of federal funding that failed to recognize that communities all across America face serious challenges needing federal support, and that funding was concentrated to only a few entities.

The most democratic way to distribute these federal dollars is to spread funding across to numerous, meritorious community projects rather than to concentrate resources to a select few.

During the last several years, countless politicians, voters, and political strategists hit the airways and demanded that Congress do away with congressional earmarks. Turns out, in FY 2007, they did.

Federal Fiscal Year Comparisons

In FY 2007 (October 1, 2006 – September 30, 2007) congressional earmarks were essentially eliminated. Perhaps it would seem that excluding earmarks would reduce the size of the federal government. Logic would have it that if Congress zeroed out funding for congressional earmarks, then federal spending would be reduced by the corresponding amount. In reality, FY 2007 funding levels (without earmarks) were the same as in FY 2006 (with earmarks). For FY 2008 and FY 2009, Congress took back the Constitutional power of the purse and distributed federal dollars more evenly across the nation. So, if there were no earmarks in FY 2007, how was the previously earmarked federal funding spent?

Instead of Congress directing how these funds were to be allocated, spending decisions were left to the individual agencies. To assess how local governments fared when Congress opted not to provide funding for congressional earmarks, examine how many and to whom the federal agencies awarded their grants. Generally speaking, federal agencies awarded substantially fewer grants when compared to when Congress earmarked these funds. A few local governments did better; the vast majority did not.

When Congress directed project spending, funding assistance was more equitably distributed. Both long serving Senators and newly elected Members of Congress were able to bring federal dollars back to their districts to serve a public need. When these decisions were left in the hands of federal agencies, only a few communities received federal assistance. Overall, funding that

was formally disseminated to local governments across the nation ended up in the hands of a few, large municipalities.

The table below details three popular congressional earmark programs that were turned into competitive federal grant programs when earmarks were eliminated in FY 2007. Analysis shows that the Administration drastically reduced the number of federal grants for public agencies and opted to provide funding to only a few. Concentrating funding to a select few is not the most democratic, most equitable way to distribute funding to communities in need.

<u>Agency</u>	<u>Grant Program</u>	<u>FY 2006 Recipients</u>	<u>FY 2007 Recipients</u>	<u>FY 2008 Recipients</u>	<u>FY 2009 Recipients</u>
DOJ	COPS Technology	423 grants in 49 states	37 grants in 26 states	560 grants in 42 states	585 grants in 49 states
DOT	Bus and Bus Facilities	442 grants in 47 states	7 grants in 5 states	313 grants in 43 states	303 grants in 50 states
DOT	TCSP	93 grants in 36 states	7 grants in 6 states	102 grants in 35 states	347 grants in 47 states

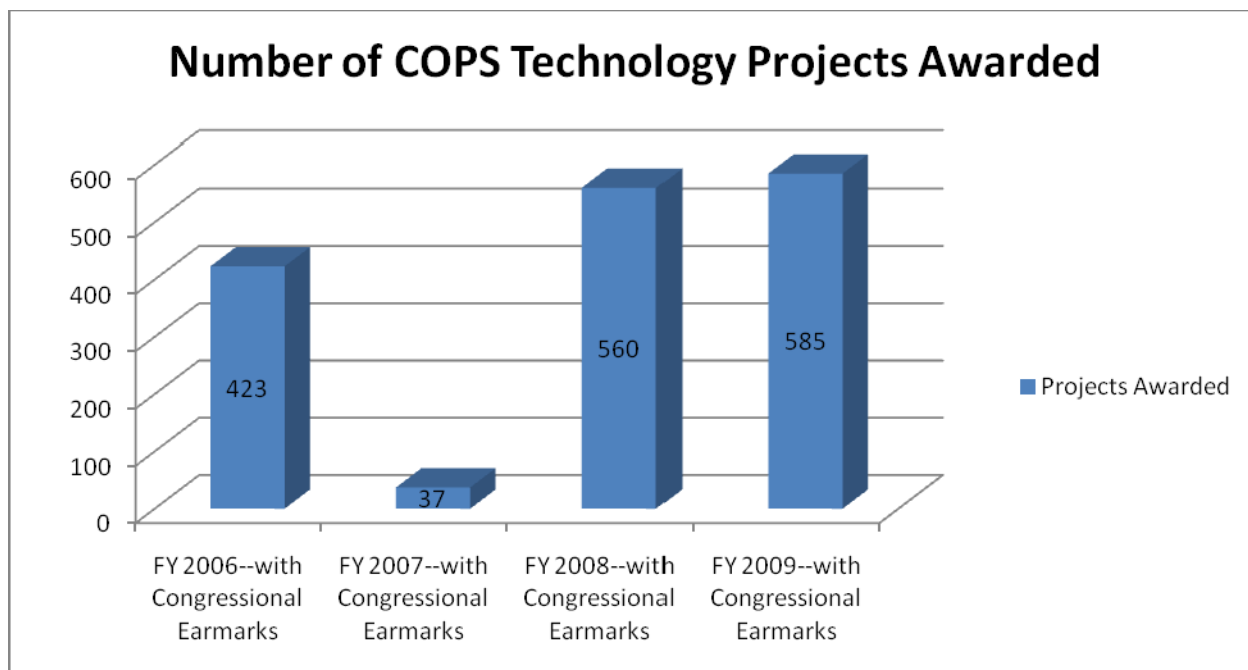
COPS Law Enforcement Technology Grant Program

The Department of Justice’s Office of Community Oriented Policing Services (COPS) was established in 1994. The mission of the COPS office is to work with communities at the fundamental, local level to prevent crime. There are several federal funding sources available through the COPS office, one of which is the Law Enforcement Technology grant program.

The COPS Law Enforcement Technology program provides funding to local law enforcement agencies to purchase equipment that will improve their crime prevention capabilities. For example, communities use COPS Technology grants to purchase uniform equipment to enable multi-jurisdictional law enforcement agencies to communicate on the same frequency.

Public safety is a priority for every local government, nationwide. Local governments have the responsibility to make certain that their local police departments have the updated technology to ensure the safety and security of local residents. Congress recognized that public safety is a concern to all communities, regardless of their size, and appropriately distributed over 500 Law Enforcement Technology grants to local law enforcement agencies nationwide in both FY 2008 and FY 2009. At least one local law enforcement agency in 49 out of 50 states received at least one COPS Technology grant in FY 2009.

The methodology for awarding these grants, when left to the discretion of the Department of Justice alone, however, was not as equitable. In FY 2007, when earmarks were eliminated, the Department of Justice hosted a grant competition for this funding. The Department pre-selected a list of law enforcement agencies who were allowed to apply for funding and when the funding was allocated, the Department only awarded 37 grants to local law enforcement agencies in 25 states.”Moreover, the police departments in the following states did not receive any COPS Law Enforcement Technology funding: Alabama, Arkansas, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Kansas, Kentucky, Maryland, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Hampshire, Pennsylvania, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming.



In addition, the Department of Justice’s COPS award recipients did not correspond to crime rates. The Federal Bureau of Investigation’s September 2007 crime statistics are detailed in a report titled “City Crime Rankings: Crime in Metropolitan America.” This report analyzes homicide, rape, robbery, aggravated assault, burglary, and auto theft rates for almost 400 U.S. cities. Of the 10 cities ranked as the most dangerous cities in the U.S., none received COPS Law Enforcement Technology grants. In addition, the top 10 most crime-ridden cities in America are located in eight different states, yet cities in only two of those states, California and Michigan, received a COPS Law Enforcement Technology grant.

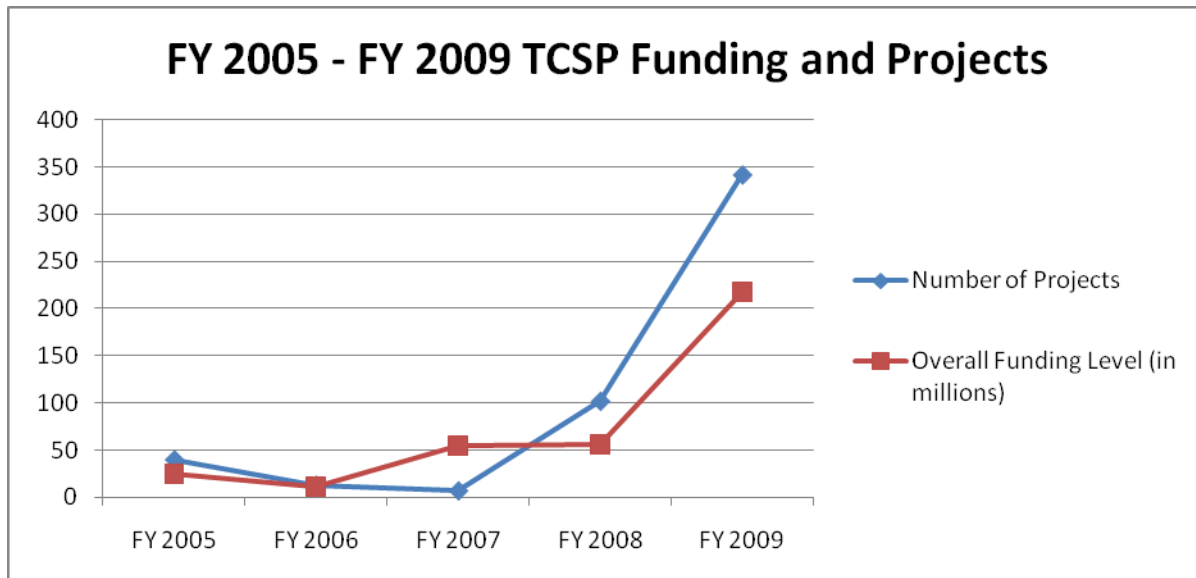
Law enforcement improvements and technology upgrades are a nationwide expense and necessary to all localities, large or small. When federal funding is distributed fairly throughout the nation, it can leverage additional local and private sector resources. When the typical police department is shut out of the process, only the Justice Department’s “top cops” receive any benefit.

Federal Highway Administration’s Transportation Community & Systems Preservation

The Transportation, Community, and System Preservation Program (TCSP) provides Federal Highway Administration (FHWA) dollars to states, metropolitan planning organizations, local governments and tribal governments, for a wide array of transportation improvement projects. The TCSP Program was established in 1999 by the Transportation Equity Act for the 21st Century (P.L. 105-178). Due to the popularity of the program, when Congress reauthorized TEA-21 in 2005, they also reauthorized funding for the TCSP program. Because of the flexibility of the use of TCSP dollars, local governments rely heavily on this funding for low cost transportation projects such as the construction of bicycle/pedestrian trails, streetscape improvements, and congestion mitigation.

Since the creation of the TCSP program, Congress has distributed funding to local governments through the congressional earmark process. In FY 2008, Congress earmarked the program and funded 102 projects in 35 states. Similarly, Congress funded 347 projects in 47 states in FY 2009.

When earmarks were eliminated in FY 2007, the FHWA hosted a competitive grant program for TCSP funding. In the end, only seven (7) grants were awarded for projects in six (6) states. The chart below shows the overall funding levels of the TCSP program between FY 2005 – FY 2009 and the number of projects that were funded with these dollars.



Communities across the nation are faced with increased traffic congestion and transportation needs. These local governments must address broken sidewalks, antiquated infrastructure, congested roads, and inadequate bicycle and pedestrian trails. More than seven communities in six states need federal transportation assistance.

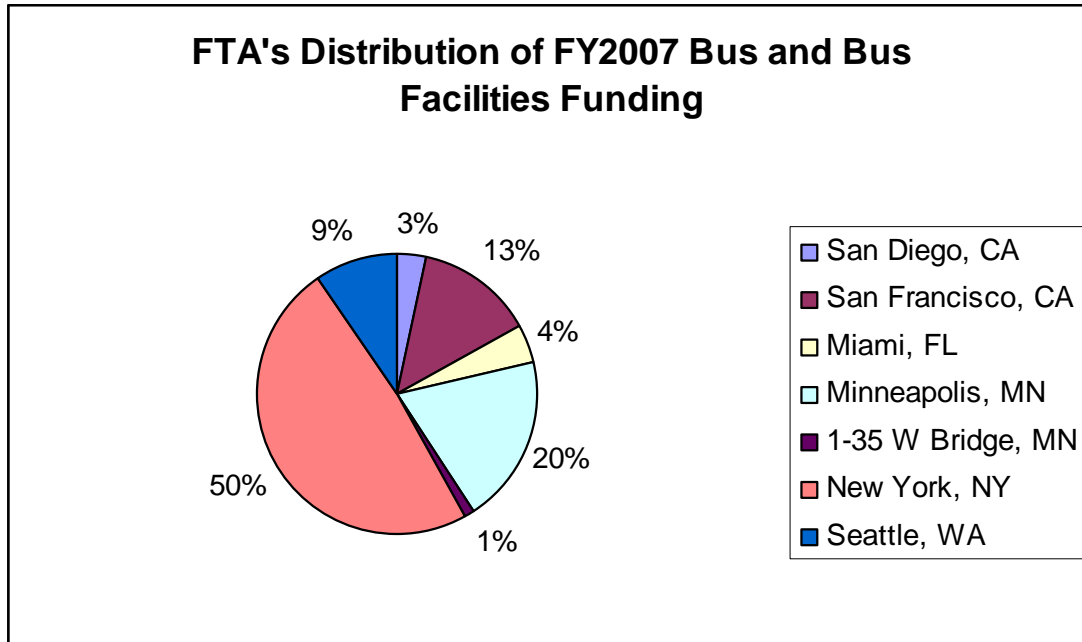
Federal Transit Administration (FTA) Bus and Bus Facilities

The Federal Transit Bus and Bus Facilities program provides funding to public transit agencies to purchase new and replacement buses as well as bus-related equipment, and to make bus facility improvements. Congress typically earmarks all of the funding provided for this program.

In FY 2009, when funding decisions were made by Congress, 303 grants were awarded to transit providers in all 50 states. In the absence of earmarks in FY 2007, the FTA hosted a grant competition for this funding. When these allocation decisions were left in the hands of the FTA, the agency awarded only seven (7) grants in five (5) states.

Moreover, the FTA did not evenly distribute this funding half of the Bus and Bus Facilities grant program funding was awarded to New York City. The chart below compares the FTA's allocation of this funding.

FTA's Distribution of FY2007 Bus and Bus Facilities Funding



The benefit of public transit is that it gets cars off our nation’s roadways and Americans to work, thus reducing traffic congestion and air pollution. The Bus and Bus Facilities Grant program has been very beneficial, enabling local transit agencies across the country to improve transit service by giving them funds to help them expand their current fleets and install amenities at transit hubs, both of which help increase the number of individuals utilizing public transit.

According to the FTA, there are 556 public transit agencies serving urban areas (areas with over 50,000 people) and 1,215 organizations that provide public transportation to rural areas. Our nation has over 1,771 public transit agencies, yet the FTA only awarded seven grants in 2007, half of which went to one city.

Moreover, FTA’s awards did not correspond to those localities with the worst congestion. The Texas Transportation Institute surveys America’s roadway congestion on an annual basis. Their 2008 report found that the following cities are the top ten most congested areas of the country: Los Angeles, San Francisco-Oakland, Washington, DC, Atlanta, Dallas, Houston, Detroit, San Diego, San Jose, and Orlando. Only two of these cities, San Francisco and San Diego, were awarded an FTA Bus and Bus Facilities grant in FY 2007 when the Department of Transportation made decisions without congressional direction.

Conclusion

The fundamental conclusion that can be drawn from FY 2007 spending, a non-earmark year, is that funding decisions were less democratic. Federal funding was more widely distributed across the nation to address critical local needs when spending decisions were left in the hands of Congress than compared to when those decisions were left to respective agencies. When federal agencies distributed what were previously earmarked dollars, they drastically cut the number of grants awarded and allocated funding to only a few, select entities.

The founding fathers rightfully gave Congress the power of the purse in the United States Constitution. Indeed working with President George Washington, Congressman George Thatcher of Massachusetts created the first earmark in the 1st United States Congress—when Congress awarded \$1500 for the completion of the Portland Head lighthouse. They realized that the people in the best position to democratically represent local needs are those who were elected locally and can therefore bring federal dollars back to their congressional district. With Congress in charge of funding, there is a more level playing field in which more communities benefit.

(About the Author: Melissa Hyman is a partner at The Ferguson Group LLC, the leading advocate for local government since 1982.)